

# Democracy in the European Union

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## Abstract

Many observers take it for granted that the European Union suffers from a lack of democracy: in the dual sense that common policies have diverged from voters' preferences (*output* legitimacy) and that decision-making mechanisms appear to lack the basic requirements of transparency, accountability and democratic involvement (*input* legitimacy). Stefano Micossi, Director General of Assonime, argues in this paper that once the Union is recognised for what it is – an innovative polity, where power is shared by a large number of players with many participation and influence-wielding mechanisms, – it becomes apparent that on the whole it complies with democratic legitimisation standards no less than do member states, even if multiple, and potentially conflicting legitimisation channels and principles may confuse observers.

The member states and EU citizens continue to turn to the Union to seek solutions to problems that cannot be solved nationally, and there is an extraordinary proliferation of subjects and channels providing participation in European debates and decisions, in new and ever-changing ways. Through this continuous adjustment process, the Union has designed new legitimisation solutions that may well represent the future of democracy in a world of diverse but increasingly interconnected communities.

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# DEMOCRACY IN THE EUROPEAN UNION

STEFANO MICOSSI\*

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## 1. Introduction

Up until the early 1990s, the European Union's popularity with its citizens had been on the rise, despite a lack of active involvement in European affairs; subsequently, it appeared to drop radically. The Maastricht Treaty ratification had to overcome widespread resistance from various quarters: public opinion, national parliaments, the German Constitutional Court. The 'permissive consensus' that had until then entrusted European elites with developing integration seemed to have evaporated.

The impasse in the fifteen years of negotiations on institutions that followed the Maastricht Treaty continued to project an image of paralysed decision-making. In 2005, the rejection of the Constitutional Treaty in the French and Dutch referendums appeared to confirm that public opinion in Europe had become dramatically detached from the institutions of the Union, and this opened up an institutional crisis, the outcomes of which no one could foresee; to some, this foreshadowed a collapse of the Union and a return to intergovernmental forms of cooperation.

The reason for this institutional crisis, according to a number of observers, lay in a lack of democracy: in the dual sense that common policies had diverged from voters' preferences (*output* legitimacy) and that decision-making mechanisms appeared to lack the basic requirements of transparency, accountability and democratic involvement (*input* legitimacy). These observers have often viewed the hiatus in public support for further integration as a significant cause of paralysis in institutional decision-making. The issue is no doubt significant, but it may well have been overestimated; the Union's unpopularity probably reflected other developments as well – in particular the impact of globalisation and technological change on labour markets, which contributed in no small manner to increased feelings of insecurity and resistance to integration among the poorer segments of society.

The issue of democracy has taken on greater prominence since the Maastricht Treaty which set up the Union and extended its scope to monetary affairs as well as to two new political 'pillars' for foreign policy and internal security: areas that had until then been the jealously guarded prerogative of member states, under national parliamentary control. In the meantime, the implementation of the single market post-1992 generated widespread resistance among those whose interests were affected by the termination of product market protections, while the Commission appeared to prance forward, applying internal market rules even to public services.

In the fifteen years since Maastricht, integration has however moved forward at a fast clip, with enlargement to ten new member states and the achievement of monetary union. Major progress has also been made under the so-called second pillar, with the strong support of public opinion: the Amsterdam and Nice Treaties thus gradually extended Community scope to matters of border control and civil justice, and the new Lisbon Treaty, to criminal justice and law enforcement affairs; as of June 2007 Europol has become a European agency. Finally, despite a drawn-out slowdown in growth, the current decade has witnessed the full implementation of the

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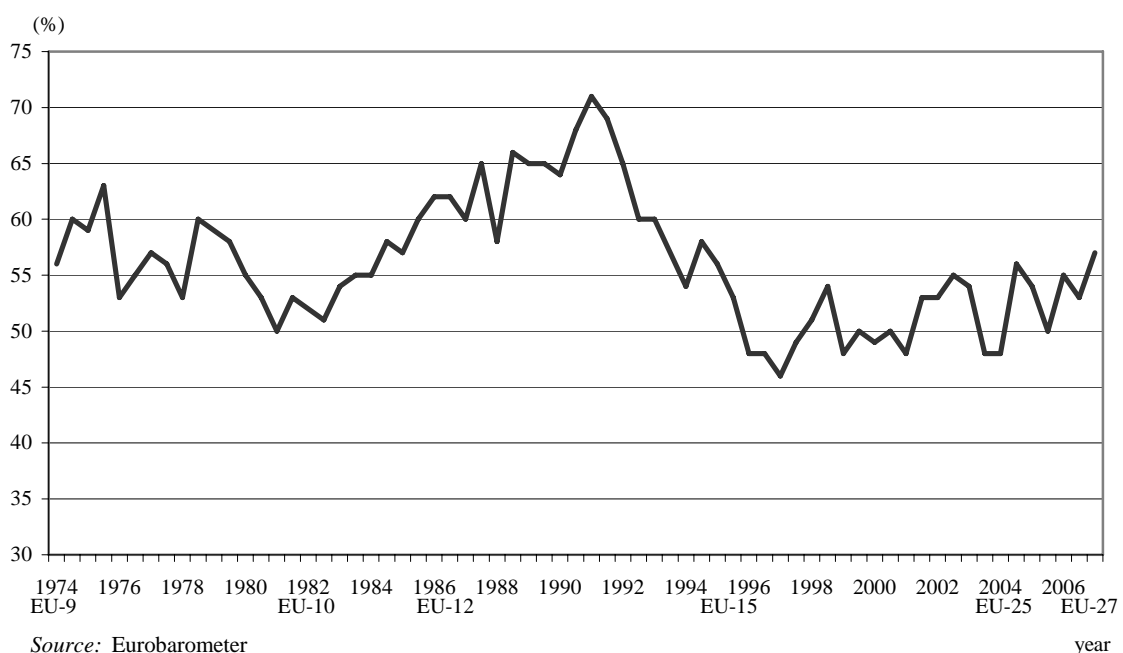
financial services action plan and the approval of the services directive, which covers all economic activities not yet liberalised under internal market legislation on a residual basis.

Two years down the road from the disastrous referendums in France and the Netherlands, with the Lisbon Treaty, member states have now reached an agreement on institutions that upholds the main innovations laid out in the Constitutional Treaty – albeit without the ‘signs and symbols’ of a constitution. A major reason, it would appear, for strong public opinion opposition – and basically settles political issues left pending, after Maastricht, in the operation of common institutions. The Treaty thus clarifies the allocation of competences between the Union and the member states, specifies the balance of powers between the Council, the Commission and the European Parliament, and rebalances, within the Council level, the voting weights of large and small countries. It also puts an end to the rotating Presidency of the European Council, strengthens the powers of the High Representative for the Common Foreign and Security Policy, reduces the number of commissioners and increases the number of topics subject to majority voting, thus improving the functionality of the common institutions.

In other words, feelings of paralysis in decision-making may be widespread in the media and public opinion alike but they are not confirmed by fact. Nor has the pace of decision-making been slowed by the accession of new member states, although some have voiced regret at the increased complexity of Council decision-making.

There is similarly no factual corroboration to feelings that public support for European institutions has continued to wane: as shown in Figure 1, over 50% of respondents to a Eurobarometer survey continue to view participation in the Union as ‘positive’; this percentage has risen again over the current decade, after having declined in the nineties. Opinion polls also show that among national and Community institutions, the European Parliament continues to enjoy considerable prestige, although declining voter participation in European elections might seem to point in the opposite direction (Hix, 1999).

Figure 1. Participation in the EU: Percentage of public opinion in favour \*



That said, the issue of democracy is perhaps better addressed in terms of adjusting a political system that has very considerably extended its scope and thus requires a corresponding extension in the scope of its democratic controls. But the lack of democracy does not appear to be the main cause of a crisis that may well have stemmed more from the weakness of governments than from the opposition of the governed, which now seems to have subsided. Nor should one expect an extension in the scope of democratic controls to solve all of European society's pending problems, ranging from unemployment to immigration, exclusion, and security, in a world where the pace of change is controlled neither by individual states nor by the European Union.<sup>1</sup>

## 2. The need for democratic legitimisation

The Union is a peculiar polity, without the powers of coercion and linkage to a geographical territory typical of national states; its powers are spread out over a number of institutions and procedures, each of which has its own legitimisation mechanisms (Lord & Magnette, 2004). These powers have been bestowed by the member states that have democratic institutions and control the Union's activity through the European Council of Heads of State and of Government and the Council of Ministers. One must therefore first of all seek to clarify the reasons underpinning requests for more legitimisation channels.

The original design of the European Communities' competences and decision-making mechanisms reflected a technocratic and functionalist approach, under which Europe's higher interests were embodied in the Commission, a non-democratic body with exclusive powers of legislative initiative and entrusted with the impartial custodianship of the Treaties. The Council was the necessarily opaque forum for political compromise among the member states; direct democratic legitimisation was limited to the Parliament, initially endowed with weak consultative powers, later to be extended to full co-decision of legislative measures.

At least until the Maastricht Treaty, but in part subsequently as well, decisions on the extension of the Union's functions were hidden behind the veil of small incremental steps justified by functional requirements. This intrinsically undemocratic strategy was facilitated by the integration process's indeterminate finality, which allowed supporters of the political union concept to co-exist with those who simply wanted a large open market. The fall of the Berlin Wall added further uncertainty regarding borders, as vagueness prevailed as to where the enlargement process would stop (Majone, 2005).

Developments in the wake of the Constitutional Treaty referendums in France and the Netherlands radically changed this picture. First of all, decisions on enlargement were shifted to the political/constitutional level as a number of countries stated that they would in future submit all enlargement issues to popular referendum. Moreover, the Lisbon intergovernmental conference has introduced the so-called Copenhagen criteria into the Lisbon Treaty, thereby severely constraining political discretion in decisions to admit new members.

More importantly, the Lisbon Treaty has somewhat set in stone the attribution principle; it has established member state residual jurisdiction in all matters not explicitly devolved to the Union and – through new protocols on the role of national parliaments in the European Union and the application of the principles of subsidiarity and proportionality – it has introduced political and judicial procedures to keep in check the Union's competences. The risk of jurisdiction 'creep',

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<sup>1</sup> This clearly does not rule out that European policies may yet improve in this respect, lending greater consistency to member state policies and strengthening their efficiency through better coordination. On this, see for instance the Sapir Report's ambitious proposals to revise common economic policies Sapir et al., (2004).

eluding democratic control, now appears to be very much a thing of the past. Furthermore, by removing the ‘signs and symbols’ of a constitution, the Lisbon Treaty has also removed indeterminate finality from the picture: it is now clear that the Union is not destined to become a state and that the current balance between federal and confederal dimensions is here to stay. The Lisbon Treaty has therefore removed a number of obvious flaws in the Union’s democratic legitimisation.

Some have claimed that democratic legitimisation of Union decisions *is not possible*, as there is no *demos*, no common identity or sufficiently shared values to guide institutional and political action (Dahrendorf, 2001; Schmitter, 2000). True, a weak common identity makes it difficult to refer back to a single popular support base; but it does not preclude the development of partial mechanisms legitimising individual decisions or decision-making processes, through national parliaments, the European Parliament, and various other channels participating in the process. Nor does it preclude forms of legitimisation linked to the output of common action, insofar as the said action does meet voters’ needs that individual national states are no longer in a position to satisfy.

One of the visible and typical effects of the lack of *demos* is the limitation of areas open to majority voting: the extensive discussions and long negotiations required for achieving consensus legitimise decisions that would not be acceptable had they been imposed by a majority of member states upon a minority of other, dissenting, member states.

Moravcsik, conversely, has claimed that further channels of democratic legitimisation *are not required*, for two main reasons. Firstly: he sees the European Union as the product of an intergovernmental agreement – embodied in the Treaties – that is “pragmatically efficient, normatively attractive and politically stable”: a satisfactory negotiated equilibrium, periodically modified when the need arises, and otherwise reconfirmed, and that therefore reflects the requirements of participating states (Moravcsik, 2006). Secondly: he maintains that increasing the opportunities to participate and decide does not necessarily generate more participation, nor does increased participation generate more legitimisation. In fact, in his view, declining voter participation in elections to the European Parliament would appear to confirm that the greater scope for democratic participation provided for by the Treaties has largely been unused; and where and when it has been used, this has been to express dissatisfaction with the domestic policies of national governments (a point also made by Bogdanor, 2007; Hix, 1999; Schmitter, 2000). Moravcsik considers that this is due to the nature of the tasks undertaken by the Union, which are of a mainly technical nature, with modest general political salience for most citizens: international trade, development assistance, agriculture, safety standards for manufactures and services.

This is however the minority view. A majority of political scientists and constitutionalists conversely feel that the Union’s institutions have now taken on an autonomous role, even vis-à-vis the member states, in defining the rights and political, economic and social conditions of individuals. They go on to assert that these powers cannot be taken back by the member states *inter alia* because of the unanimity requirement for Treaty revision, and deem that the accumulation of powers in Union hands has already exceeded the threshold requiring autonomous safeguards against possible abuses (Schmitter, 2000; Lord, 2004; Lord & Harris, 2006; Schmidt, 2006). Possible abuses that concern first and foremost the Council, insofar as it can elude national parliamentary control when ruling at the Union level.

Moreover, further expansion of the Union’s political agenda and activities through functionalist methods – devised by Monnet with a view to pursuing the European construction following the rejection of the European Defence Community by the French National Assembly in 1954 – no

longer appears to be an option.<sup>2</sup> Further political and institutional progress can only stem from deliberate decisions on the part of member states acting in full accountability vis-à-vis their public opinions and parliaments. As mentioned earlier, it is significant in this context that the Lisbon Treaty should have made the attribution principle more rigid, and stated that the Union can only undertake those tasks that are explicitly listed in the Treaties, with all other competences coming residually under the jurisdiction of member states (Articles 4 and 5 of the Lisbon Treaty).

The coexistence within the Union of two distinct levels at which public institutions exercise their power – federal and confederal – generates an intrinsic need for corresponding democratic legitimisation mechanisms and channels, focusing on the one hand on member state representation in the Council and on the other, on citizen representation in the European Parliament. This dual representation has now been explicitly acknowledged in the Treaty on Union agreed in Lisbon, new article 8A of which reads (paragraph 2): “Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.”

At the member state level, national parliaments and the public at large need to be kept abreast of the decisions to be taken within European institutions, and put in a position to influence the behaviour of their own national representatives to Council. At the Union level, separate control and legitimisation channels are required since acts and decisions acquire autonomous value with respect to individual member states’ contributions: because of the need to reach compromise solutions that may well sacrifice national interest and the use of qualified majority voting at Council level. This is also because of the constitutional weight of principles of primacy and the direct effect of community legislation and because of the role the Community judicial can play in the defence of individuals’ rights, even vis-à-vis the member states.

The revealed preference theorem that is at the root of Moravcsik’s analysis of negotiated equilibrium among Union countries (Moravcsik, 1998) supports this conclusion: in actual fact, over the last three decades there has been a constant increase in the Union participation and control mechanisms, through the European Parliament and national parliaments alike, that have supplanted and taken over the role initially played by organised economic interest groups, which had grown strong *inter alia* thanks to active encouragement by the European Commission. Various other channels have been opened that provide individuals with direct access to European institutions: examples include the European Ombudsman and the right to petition European institutions in one’s mother tongue, introduced by the Maastricht Treaty, and broader rights for individuals to institute proceedings before the European Court of Justice.

New Title II of the Treaty on Union adopted in Lisbon, “Provisions relative to democratic principles”, while carrying over from the previous Treaty provisions on citizenship, specifies new rules on the right of Union citizens to take part in its democratic life, including the right to legislative initiative.<sup>3</sup> This same section also contains detailed provisions regarding national parliament participation in the functioning of the Union (see Article 8C).

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<sup>2</sup> Radical criticism of this ‘stealth’ approach to the extension of competences is seen in Majone (2005).

<sup>3</sup> According to Article 8B, paragraph 4, “Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”

A mapping of decision-making procedures in the various areas of common action confirms the growing demand for democracy at Union level. The extension of qualified majority voting in new areas – which reduces the control individual member states have over Council decisions – was always matched by an extension of European Parliament powers. This occurred with the Single Act, which applied majority voting to decisions regarding the internal market, subsequently leading, in the Maastricht Treaty, to the introduction of co-decisions between Council and Parliament; it also occurred when issues of immigration, justice and law enforcement came under Community jurisdiction, where Parliament was simply to be informed of decisions reached by unanimity in the Council, whereas the Lisbon Treaty has now provided, together with majority voting, for co-decision to become the normal procedure.

Similarly, the Commission's exclusive right of legislative initiative has mainly applied to 'negative' integration, i.e. decisions that remove barriers to the internal market (Majone, 2005),<sup>4</sup> while in matters such as the coordination of economic policies or foreign and security policy, the initiative has remained in the hands of member states, safeguarding the prerogatives of national parliaments. The Lisbon Treaty has now decided that in "specific cases provided for by treaties" procedures followed for the adoption of directives, regulations or decisions may waive Commission participation (Article 249A, Treaty on Union).

Nor do facts confirm the low level of public interest in Union decisions. Public debate on issues such as the European directive on services, the accession of Turkey, or the mention of Christian values in the Preamble to the Constitutional Treaty elicited the active involvement of intellectuals, political parties and large segments of European society.

### 3. Control and democratic legitimisation mechanisms

There is widespread feeling that the existing democratic control mechanisms within the Union are weak and inadequate; as mentioned above, criticism has focused both on the *input* to the decision-making dimension, and the substance of decisions, and on the *output* dimension. Let us look at the former first.

#### ***Elections and referendums***

The main mechanism of democratic participation lies in the popular vote in elections and referendums. As noted above, voter participation in elections to the European Parliament is not high, at less than 50% of the electorate, and it dropped by about 20 percentage points between 1979, the first election, and in 2004.<sup>5</sup> Furthermore, voter positions on European matters have appeared to be strongly correlated to the popularity of national governments in office: so much so that some observers have characterised European elections as 'second round' elections, used to send signals to domestic rather than European politicians (Hix, 1999; Schmitter, 2000).

Low voter participation may however stem from reasons other than disaffection with Community institutions (Lord, 2004): it may for instance reflect the fact that these consultations have little impact on the general thrust of European affairs and the identity of those who will be

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<sup>4</sup> Under the Treaty of Lisbon the Commission's right of initiative shall apply to legislation relative to the area of freedom, security and justice; this indicates a broadened consensus to decide significant 'positive' integration policies.

<sup>5</sup> Some observers have however claimed that decline in voter turnout largely reflects spurious statistical phenomena in voter demographics, in particular the accession of countries where voter turnout is traditionally lower; when data is corrected for such phenomena, the downward trend is less marked (Franklin, 2001).



chosen to govern. Alternatively, in a more positive view, low voter participation may reflect the basic consensus of leading political groups as to the general direction of European affairs: when positions advocated by parties and candidates appear to be sufficiently aligned to the preferences of the median voter, the incentive to go out and actually vote is reduced. In fact, the remoteness and complexity of European issues tends to generate concordant positions of national parties, with little room for the traditional left/right cleavages.

That said, the central issue remains the absence of a *demos* and a unified public space at the European level where public opinions would feel it relevant to express their personal preferences. This weakness in the European political system is not going to be remedied overnight; it can only fade gradually with the emergence of European political parties and an increased perceived relevance of European issues in everyday life. In fact, European political groupings have become more stable over recent years, and have begun to focus their meetings on specific European issues, according to timelines linked to those of the European Council.

The process could be speeded up – based on the new powers bestowed on Parliament by the Lisbon Treaty – if national parties were to take the opportunity of European electoral campaigns to make explicit their preferences regarding the Union’s budget and other Union policy issues.

Conversely, the idea that the President of the Commission should be elected directly by voters seems unconvincing: politicising the Commission would be incompatible with the Commission’s functions as arbiter of Treaty application and its exclusive powers of legislative initiative, which also assumes a shared, non-partisan vision of the integration process. For the time being, no such radical change in the institutional equilibrium of the Union seems topical.<sup>6</sup>

Equally unconvincing is the idea that the democratic gap could be bridged by resorting more frequently to referendums: the dangers inherent in the recourse to direct democracy for the settlement of complex issues is increased, in the case of European issues, precisely by the lack of *demos* and a strong collective identification with European institutions.

### ***The role of national parliaments***

At the member state level, what matters is adequate control by national parliaments over the action of governments and administrations within the Council, which constitutes an *indirect* channel of democratic control by citizens over Union decisions.

National parliaments play a central role in the approval of Treaty modifications, which constitute the Union’s primary law; in many member states this approval comes under constitutional procedures. Similarly, decisions on the Union’s financial resources require ratification under national fiscal procedures since they imply funding by state budgets. Clearly, national parliaments’ powers are greater for Council decisions adopted under the unanimity rule, where European Parliament involvement is weaker. Since such decisions have considerable political and institutional significance, powers of scrutiny are usually exercised with high degrees of incisiveness and often with active public opinion participation. Conversely, national parliament control is inevitably weaker over Council decisions regarding Union directives or policies where majority voting is the rule.

This is why some observers have claimed that transferring functions to the Union implies shifting the balance of powers towards executive powers, which can avail themselves of considerable discretion when negotiating compromises within the Council, as well as towards

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<sup>6</sup> The increased powers granted to the European Parliament in the appointment of the President of the Commission do not contradict this statement, as the appointment also requires the agreement of the European Council and a broad consensus within both institutions.

bureaucracies, which cooperate in the implementation of Community norms within Council Committees. Both sets of institutions, far removed from the eyes of the public, can collude with the Commission and with segments of the organised interest community, according to vertical “*filières*” (procedures) can use the Union to bring about decisions that would not be feasible at national level (Chrysochoou, 2003; Maurer et al., 2000).

Certain member states – in particular Denmark and the UK – have addressed this issue by adopting tight procedures to provide guidance and oversight for government behaviour within European institutions, while in other cases parliamentary procedures appear less incisive and could be strengthened (Hix, 1999; Lord, 2004).

That said, majority voting within the Council and co-decision with the European Parliament rule out rigidly binding mandates, that would preclude all compromise; similarly, any direct intervention by national parliaments in European decision-making would surely entail decision-making paralysis (cf. Manzella, 2008). Democratic control must therefore be resolved through the Union’s mechanisms – that is, mainly scrutiny by the European Parliament.

One noteworthy exception to this conclusion concerns the role of national parliaments in defending subsidiarity. Such a role would no doubt be consistent with the system’s inner logic: violation of the subsidiarity principle would indeed amount to an infringement of member state prerogatives by Community institutions, which national parliaments are fully entitled to oppose.

Should conflicts arise and do not lend themselves to settlement, the Court of Justice shall have the last word; but prior to that cooperative solutions could be sought, through appropriate procedures, by national and Union-level legislative bodies. The Lisbon Treaty has accommodated this approach in the Treaty’s new Article 8C and the new Protocols on the role of national parliaments in the European Union and on the application of the subsidiarity and proportionality principles.

### ***Control and democratic legitimisation at the Union level***

The Union is a peculiar polity where power is spread out over multiple centres and is exercised through various decision-making procedures – currently numbering about thirty.<sup>7</sup> It features not only frequent dissociation of territorial and functional jurisdictions, but also variability in the criteria defining insiders and outsiders with respect to the exercise of its powers, both functionally and territorially (Schmitter, 2000); for this reason, as pointed out earlier, it has been described as a polity with undefined borders. The European Parliament, the main expression of popular will at the Union level, has up till now only fully intervened in decisions regarding the so-called first pillar; as has been described, this has now changed with the Lisbon Treaty.

In addition, debate on European issues tends to elude the left/right divides typical of national political systems (see Hix, 1999 and Bastasin, 2008), and break up on a case by case basis into different member state and interest group coalitions: this does not favour linkages between national political debates and decisions to be taken at the European level. In fact, despite the emergence of transnational European parties, voting patterns in the European Parliament reflect motivations that can rarely be traced back to traditional political stances within member states; and national public debate on European issues tends to run along pro- and anti-European lines, which are also poorly correlated to traditional party divides.

Finally, as noted by Majone (2005), power in the Union is not organised according to the division of powers paradigm typical of Western democracies, but according to a model where

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<sup>7</sup> See Final Report, European Convention Working Party IX on Simplification, CONV 424/02, 29 November 2002.

different powers are shared among stakeholders, as in pre-modern European polities: member states, the European Parliament, Community technocrats, social groups standing for organised interests, and even magistrates participate variously in decision-making and procedure developing, depending on the topic and the coordination problem to be resolved.

The two most emblematic illustrations of this model are the so-called Community decision method and the ‘networked’ participation of organised interest groups in decision-making processes. Under the Community method, the Commission puts forth proposals for directives and decisions, Council and Parliament reach decisions together according to procedures that combine varying degrees of majority voting and consensus, depending on the intensity of national preferences. If the Commission does not agree to the amendments agreed by Council and Parliament, it may withdraw its proposal; without such a text, Council and Parliament cannot reach a decision. In practice, each of the three bodies needs the other two to come to a decision.

According to Majone (2005), the Community method – or more specifically the exclusive powers of legislative initiative resting with the Commission – is the “quintessential” expression of the European construction’s non-democratic nature. However, as has been recalled and he himself notes, this power was devised essentially for issues relative to the freedom of movement – i.e. ‘technical’ issues in the sense used by Moravcsik, and applies neither to general economic policy nor to the eminently political issues of foreign and defence policy.

In the exercise of its power of initiative, as in that of guardian of the Treaty, the Commission’s function can perhaps best be understood not as a supra-national independent interpreter of shared public interests, as envisaged by its founding fathers, but as a technical power: in other words, the Commission can be seen more as an executive agency and a judge than as a government. And in fact, its powers are specifically defined by the treaties and in many cases are exercised on the Council delegation of authority. With the extension of the Union’s ‘political’ remit, there has been a constant increase in Council and Parliamentary weight in decision-making, whereas the Commission’s role has been limited to one of technical support and secretariat.

Nor is the Commission’s power of initiative exercised as if it were absolute: in fact the Commission responds to requests from member states, organised interest groups and Parliament. Over the last few years, the balance of such influence has shifted significantly towards Parliament, which approves the Commission when it is appointed, may dismiss it with a vote of no confidence, and controls its budget.

As for networks, the Euro-polity has from the very onset accorded privileged status to associations representing organised economic interests at the European level; it has often encouraged and financed the setting up of such bodies. Over time, producer organisations were joined by trade unions, consumers, environmentalists and ‘single issue’ advocacy groups; many regions have set up representation offices in Brussels. These organisations have become the focal point for networked, extended communities of interests in the member states, that rely on the network to take part in Commission and Parliament consultation processes, publicly debating the merits of measures as they are being developed, and standing in on the drafting of legal provisions, to which they may contribute with their technical input.

Similar developments have targeted public administrations and agencies as well, following the Single Act. Within the Union, the application of common legislation is entrusted to the member states (Article 10 of the Treaty establishing the European Community). Qualified majority voting was introduced in Council for internal market measures in parallel with the setting up of Council Committees made up of member state representatives and (as a rule) chaired by the Commission, entrusted with coordinating the application of common legislation. These

Committees went on to become the hubs of national public administrations' specialised functional networks; through these, vast swathes of civil servants have become the voice of national interests within Community institutions, and the voice of the Community within national bureaucracies. The European Parliament has gradually developed powers of scrutiny geared to their activities, thereby controlling the exercise of the powers delegated to them and politically impacting their work.

A significant example of this is the approval of the so-called Lamfalussy procedures for decisions regarding financial services, which provided Parliament with an opening to introduce, (in addition to increased powers of control over delegations of authority) a formal provision for the termination, four years hence, of the delegation of authority to the European Securities Committee. In this way it imposed a new parliamentary review as a precondition for the continued exercise of the aforementioned authority.

Regulatory agencies – set up to provide continuity and independence to the executive in fields such as competition, financial market supervision, food and environmental security (Majone, 1996) – have also established their specialised networks, the hubs of which are the Committees of national regulators where officials define regulatory guidelines and review implementation issues. European Parliament involvement in this area has been considerably less, as independence from political interference is an essential rationale for such agencies.

This increasing number of networks has contributed in no small way to the legitimisation of Community institutions vis-à-vis various constituencies, through widespread participation, the emergence of broader bases for consensus on Community institutions' legislation and decisions, and the introduction of counterweights to the various decision-making centres. To some extent, this may weaken the European Parliament's powers of guidance and control. But the increase in the number of legitimisation channels does strengthen the Union (see Cassese, 2002 and his introduction to this collection), in a complex transnational system where the development of channels of representation and communication between representatives and those they represent remains limited.

Potential conflict between various legitimisation channels in turn induces adjustments to the way the system operates, through a continuous process of “constitutional deliberation”, a salient feature of European institutions (Lord & Magnette, 2004; Cassese, 2008). Public opinion concerns regarding the impact of internal market common policies were thus taken on board as of the Amsterdam Treaty, through a revision of Article 95, the main legal basis for internal market legislation, and the introduction of new Article 16A on public services, which extended the scope of national public interest protection with respect to the application of common legislation.

On the whole, the multiplicity of decision-making procedures, often criticised as causing opaqueness throughout the process, reflects varying balances of power between players and interests involved in decisions regarding specific sectors or fields, negotiated at the outset or through successive adjustments in the management of common policies. They therefore play an important legitimising role that should not be ignored.

### ***Popular legitimisation and constitutionalism***

Mény (2002) has argued that popular dissatisfaction with democracy has increased because of the increased burden of “constitutionalist” or “non-majoritarian” mechanisms in the exercise of public powers; this concerns member states as much as it does the European Union. Stemming from the need to limit the “tyranny of the majority”, it has led to the establishment of executive and judicial powers independent from majoritarian politics: conventional examples include the protection of human rights, the administration of justice and the federal devolution of executive

powers. This fragmentation and dissemination of powers necessarily entails a drop in popular input into public decisions and thereby a potential loss of popularity. Over the last few decades these independent powers have taken on particular significance in market regulation, through the setting up of independent agencies (Majone, 1996). In many countries, monetary policy management has been entrusted exclusively to central banks, thereby removing it from the sphere of possible inflationary manipulation by governments.

Central banks and regulatory agencies were set up by parliaments that defined their goals and instruments in the law; in the exercise of their powers they were made independent from the executive but not from parliamentary scrutiny. Their legitimisation is secured not only by their political and parliamentary mandate, but also by procedures defining how decisions must be taken for the protection of the collective and the individual interests they are mandated to uphold (Lord & Magnette, 2004).

A significant aspect of European Union activity does indeed concern market regulation, with a view to removing barriers to free circulation and competition. Although the exercise of such powers is provided for in the Treaties and sanctioned by directives adopted by Council and the European Parliament, as noted earlier, when it comes to implementation the Commission operates as an independent agency, sanctioning states and individuals for violations and obliging them to put an end to prohibited behaviour. Decisions may be corrected through appeals to the European Court of Justice, but not by national or Union political powers.<sup>8</sup>

The granting of such powers to the Commission and the Court follows a federal organisational model and is firmly grounded in economic policy theory; it conveniently frees national political systems from the onus of applying unpopular legislation that may harm widespread interests and removes the exercise of such powers from the purview of party politics. Policy credibility and efficiency are thus enhanced (Majone, 1996).

Some have claimed that the European Central Bank (ECB) enjoys even greater independence than do national central banks, as neither the Council nor the European Parliament provides an actual political counterweight. The ECB's mandate is Treaty-defined, and therefore can only be modified via a unanimous vote of the member states, whereas in most countries the central bank's mandate is defined by ordinary legislation.

The loss of political control can generate unpopularity – understandably, insofar as public opinion may not perceive the efficiency benefits in economic policy management linked to this “constitutionalization” (Eichengreen, 2007). Unpopularity may also stem from the very attitude of governments: in recent years, some governments have shown no hesitation in blaming the Union for unpopular policies they had voluntarily agreed to implement within Council. Unpopularity can also feed on the rising intensity of forces for globalisation and technological change, as these reduce the effectiveness of traditional tools of economic management and income distribution (Dahrendorf, 2001; Scharpf, 1999; Schmitter, 2000).

This is a very widespread phenomenon, observable in all democratic systems, and not specific to the Union: improving democratic control over independent institutions – through parliamentary scrutiny of compliance with goals set, rather than with decisions reached – can alleviate the impact of unpopularity, but not eliminate it. The most significant contribution in terms of restoring government and Union popularity would come from better designed economic policies, able to reassure economic players and citizens not by offering them forms of

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<sup>8</sup> A significant exception to this rule is contained in Article 88, para. 2 of the EC Treaty, under which the Council may, acting unanimously, decide that state aid is compatible with the common market, in derogation from the provisions of Article 87, even when the Commission has already launched an infringement procedure.

protection that no longer work, but by strengthening their ability to boldly address the challenges of global markets. This is the topic of the following section.

#### **4. Legitimisation through substantive Community action**

Public institutions are established to meet needs that cannot be met through individual action and thereby require forms of *collective* action. The quality of collective action plays a significant, and in the long run, crucial role among legitimisation processes. This applies to the European Union's institutions as well: all the more so, as democratic legitimisation through decision-making processes is weaker there (Schmitter, 2000; Scharpf, 1999).

Various authors have considered this to be a leading cause of Union unpopularity: they feel that integration policies reduce the latitude national policies may have to achieve redistribution goals, thereby contributing to a 'race to the bottom' in terms of public welfare and public services. Dahrendorf (2001) considers that decisions have migrated far from the locus of democracy, thereby compromising their credibility; Scharpf (1999) thinks that democratic states' role in securing acceptable redistribution has been compromised by integration; Mény (2002), as we have just seen, underscores the Union's role in shifting the state/market balance in economic policies in favour of market forces.

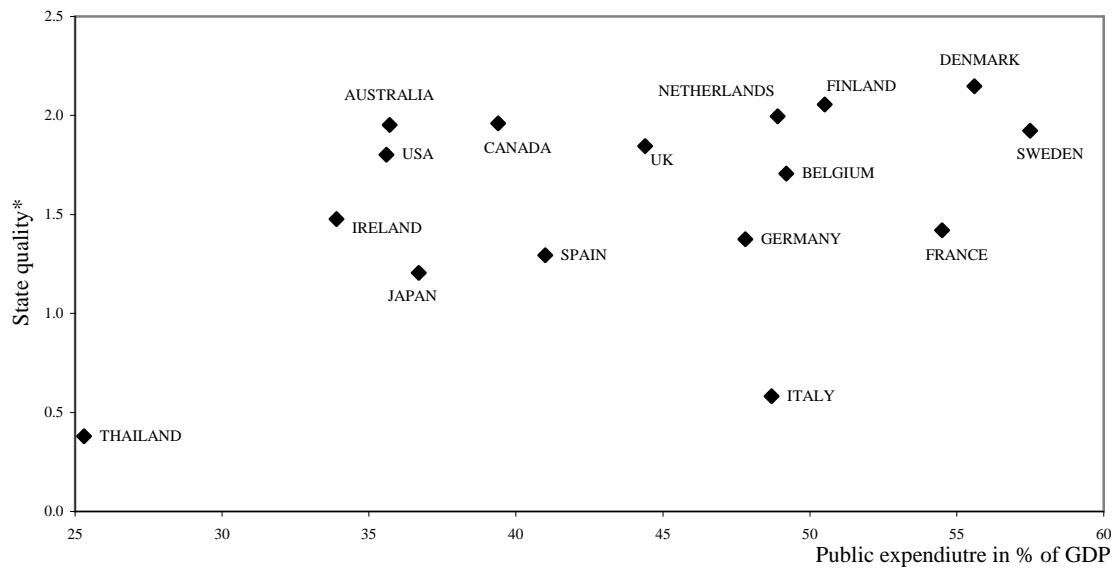
These conclusions call for some qualification. First of all, as pointed out earlier, the loss of control suffered by national policies has to be assigned to globalisation more than to specific action on the part of the Union; the Union, and the member states for that matter, can do nothing but adapt to processes that elude control by all governments. The criticism therefore concerns the operational difficulties encountered by democratic systems in general, and not only by European institutions. Examples include difficulties in responding adequately to economic insecurity or to national welfare system strains linked to population ageing. Moreover, during the slow growth years weak and irresolute national governments did not hesitate to blame Europe for events that stemmed from their inability to reach decisions, thereby feeding hostility towards European institutions.

It is also worth noting that many Union initiatives have constrained state action, but to the benefit of citizens: for instance, by strengthening the defence of consumer interests through competition policy or transparency and quality requirements in the provision of public services.

Finally, empirical evidence confirms convergence in the fundamental philosophy of macroeconomic policies, in the sense that neither monetary policy nor public deficits are considered very effective tools to bring about sustained improvements in growth and employment. Data however does not confirm the existence of a general constraint on national policies precluding the pursuit of autonomous goals of equity and solidarity.

Mosley (2004) has shown that pressure exerted by financial markets on governments with a view to having them reduce deficits is not related to the adoption of the single currency. Figure 2, drawn from Fukuyama (2004), plots state size, measured by public spending over GDP, and quality of public administration and services, measured on the basis of indicators developed by the World Bank: it seems to confirm that countries very different from the viewpoint of state size, and resulting tax burdens, do persist in an environment of integrated capital markets. In other words, different collective preferences in terms of public intervention need not be incompatible with integration and globalisation.

Figure 2. State Quality and Scope, 2004



Source: Fukuyama (2004), our computation of OECD and World Bank data

\* This indicator measures quality of bureaucracy and supply of public services and varies between -2.5 and +2.5. Higher values correspond to better performance.

The explanation implicitly suggested by the figure is that voters may well decide to spend more on collective services, provided the output is of good quality and the service cost is therefore commensurate with benefits accrued to the community. Tax competition, according to this reading, increases pressures to reduce inefficient public spending, but not public spending as such.

Similarly, a whole body of literature has identified sustainable unemployment benefit schemes as well as inefficient schemes, which are unsustainable in an open and integrated environment (Sapir, 2006). The fundamental difference does not so much concern the goals but the methods used for protection. Systems that work better in general are systems that provide protection to individuals – through income support and assistance in finding new employment – and renounce rigid job defence, thus supporting labour and capital mobility in response to changing market incentives. Insofar as they encourage risk-taking, efficient insurance systems against the risk of losing one's job can increase growth, rather than hamper it (Ferrera & Sacchi, 2008).

If integration and equity are not objectively contradictory, the logical consequences purported to derive from their contradiction are similarly invalid: the EU, as a vehicle for integration, need not be doomed to suffer weak legitimisation because of its economic policies. This does not mean that the EU shouldn't concern itself with building consensus around its policies, identifying areas in which the existence of significant transnational spillovers justifies and actually requires its intervention. In their essay recalled above, Ferrera and Sacchi argue that adequate Union-level social policies are essential to secure public opinion support for the integration process; and Gros and Micossi (2006) have called for common labour market policies that would facilitate the integration of immigrants while limiting the impact of wage undercutting for nationals.

As a rule, responsibility for economic and social policies lies with the member states, and this should be acknowledged publicly. That said, a distribution of tasks between the EU and member states that would assign the former responsibility only for 'negative integration' policies – i.e.

establishing a common market and removing barriers to free movement – would be necessarily unpopular and untenable in the long run. This is why the identification of appropriate ‘positive integration’ policies, taking on board public opinion demands – for social cohesion, security, effective management of migration flows – remains a crucial element of legitimisation, while maintaining a clear division of roles that specifies what the Union may contribute and what may only be done by the member states (Gros & Micossi, 2006).

### ***Opening up new areas for decision-making on EU policies***

The Lisbon Treaty has kept the name of the Treaty on European Union, while modifying that of the Treaty establishing the European Community, which will now be called Treaty on the Functioning of the European Union. The name change is substantive: many rules regarding the functioning of what was previously called the second and third pillar are now included in this second part.

More important, this bipartition could also foreshadow a distinction between fundamental and ordinary law, as already exists in many a country. This interpretation is confirmed by the simplified revision procedures applicable to the provisions “relative to the internal policies and actions of the Union” (cf. Article 33 of the Final Provisions of the Treaty on European Union). These procedures envisage that the Council shall decide Treaty changes in those areas unanimously, after having consulted the European Parliament and the Commission. Convening an intergovernmental conference will no longer be required.

The issue is addressed in a more general context in Tosato (2008). Suffice it to say that this change has potentially significant implications for the Union’s democratic legitimisation: common policies can now be changed without this challenging the institutional framework of the Union. The policies concerned have indeed become just that: common policies, about which political differences may appear, according to traditional left/right lines or to new divides specific to the European public arena. In other words, new spaces have been opened up for public debate and political action at Union level; if they are used, the Union’s democratic legitimisation may be strengthened.

With new tasks to undertake and new public spaces for political debate at a transnational level – that of democracy “beyond States”, to quote Lord and Harris (2006) – the politicisation of the Union’s institutions seems bound to take up greater scope. The process will however need to take into account the specificities of European construction, where many authorities have been established to guarantee the impartial implementation of common rules: in order to survive, there is a need to preserve the areas of impartiality, free of partisan political influences.

## **5. Conclusions**

The European Union is not a state, so comparisons with state-type models of democratic legitimisation may well prove misleading. Nor is the discussion about intervening *ex novo* to introduce democratic accountability within an organisation that did not previously know it. The first direct election to the European Parliament took place nearly thirty years ago; since then, the Union’s institutional system has continued to evolve, establishing significant scope for democratic participation and control in the process.

Once the Union is recognised for what it is – an innovative polity, where power is shared by a large number of players, with many participation and influence-wielding mechanisms, constantly adapting its institutions to the requirements of its component parts – it becomes apparent that on the whole it complies no less with democratic legitimisation standards than do



member states (Mény, 2002), even if multiple, and potentially conflicting legitimisation channels and principles may confuse observers.

In the end, the Union will be strong in the eyes of public opinion and member states alike if it manages to come up with solutions to the challenges of globalisation, external and internal security, energy and the environment. In this respect, there is no reason why difficulties encountered over the last decade should endure, to the extent that they were a systemic consequence of poor Union functioning. On the contrary, we are perhaps reaching the end of a long and painful adjustment process to an exceptional series of real and financial shocks, generated by the fall of the Berlin Wall. Time will no doubt tell.

For the time being, what needs to be kept in mind is that the member states and EU citizens, however mangled by crises and difficulties, continue to turn to the Union when seeking solutions to problems that cannot be solved nationally, and that there is an extraordinary proliferation of subjects and channels providing participation in European debates and decisions, in new and ever-changing ways.

Of course, this continuous adaptation process has not been without consequence for institutional balance. The founding fathers' initial idea of a supranational polity has been scaled down to accommodate a more realistic view of power attribution and sharing. With the extension of the Union's scope, and its increasing politicisation, the weight of Council and Parliament in decision-making has increased; the Commission has strengthened its technical prerogatives in matters of Treaty implementation and enforcement, while its right of initiative has been curtailed. Application of the Community method has been circumscribed to some areas, mainly those where common action is basically technical and 'non-majoritarian'.

Through this continuous adjustment process, the Union has continued to design new legitimisation solutions for multi-level and transnational political structures, which may well represent the future of democracy in a world of diverse but increasingly interconnected communities.

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